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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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08/975,284 11/20/97 THERMOS

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/ QM51/0618
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 EXAMINER

WELDON, K

| ART UNIT | PAPER NUMBER |
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| 3752 | 6 |

DATE MAILED: 06/18/99

FR

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

975284

Applicant(s)

Thermos

Examiner

K Wedlow

Group Art Unit

3752

 Responsive to communication(s) filed on Interview on 6/8/99 + amendment 4/5/99 This action is FINAL. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire Three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims Claim(s) 1-13 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

 Claim(s) _____ is/are allowed. Claim(s) 1-13 is/are rejected. Claim(s) _____ is/are objected to. Claims _____ are subject to restriction or election requirement.**Application Papers** See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The drawing(s) filed on _____ is/are objected to by the Examiner. The proposed drawing correction, filed on _____ is approved disapproved. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119** Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All Some* None of the CERTIFIED copies of the priority documents have been received. received in Application No. (Series Code/Serial Number) _____. received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

 Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)** Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152 Copy of marked up Rodriguez-Ely**-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --**

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. Claims 12 and 13 submitted in the amendment filed April 5, 1999 were not properly treated as indicated by applicant's representative in the telephone conversation on June 8, 1999.

Applicant's arguments filed April 5, 1999 have been fully considered but they are not persuasive.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,5-8,12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez-Ely.

The Rodriguez-Ely patent in figure 1 discloses a nozzle comprising a body member having a tube *a* for passing oxygen, a passage *b* fro oxygen and a tube the tube and housing defining an annular chamber in communication with a plurality of radially distributed outlet ports

d. The figure 1 embodiment shows a coupling means for supplying the oxygen tube but it is unnumbered, the fuel passage *a* inherently must have a coupling means for connecting a supply of fuel to the passage *a*.

4. Claims 1,4-8,10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Yerkins 3477112.

The Yerkins patent discloses a body member 24 having a straight bore 28 and an angular bore 32, a concentric tube 26 and a plurality of outlets 48 surrounding the tube outlet.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Ely in view of Zwicker.

In column 3 lines 60-65 the Zwicker patent discloses constructing the torch from a corrosion resistant material such as stainless steel. It is deemed to have been obvious to one of ordinary skill in the art to incorporate stainless steel to construct Rodriguez-Ely's torch to prevent corrosion.

7. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Ely in view of Magner.

It is deemed to have been obvious to one of ordinary skill in the art to construct the body member to include integral radially spaced outlets about the center passage fro ease in construction.

8. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Ely in view of Yerkins 3477112

It is deemed to have been obvious to one of ordinary skill in the art to incorporate a flange as taught by Yerkins '112 at 44 about the tube in Rodriguez-Ely to permit quick and ease replacement of all outlets.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Ely in view of Pierce.

In figures 10/15 of Pearce openings about the central tube opening are formed by cooperating members such as the grooves. It is deemed to have been obvious to one of ordinary skill in the art to form the openings by cooperating grooves between the central tube and body member in Rodriguez-Ely to provide openings and simultaneously center the concentric tubes.

10. The applicant's remarks and amendments have been carefully considered by the examiner. With respect to the remark that Rodriguez-Ely does not disclose a body member having an angular bore and straight bore that are in communication. It is unclear what is meant by in communication? As this term is defined in the specification and as shown in the drawings bore 21 is considered in communication with bore 23 although flow does not communicate between bore 21 and bore 23 at the point of intersection between the two bore. The flow through passage 21 communicates with annular passage 22. Does communicate mean mix as implied by applicant's arguments? Note the fuel and nitrous don't mix at the point of intersection either.

Similarly, the straight bore in the housing and internal tube b's exterior surface of Rodriguez-Ely forms an annular channel from the gas entering port a. Note all of the outlets d communicate with the annular passage. The straight bore is indicated by the yellow high lite in the attached copy of the Rodriguez-Ely reference and the blue magic marker identifies the angular bore.

With respect to the argument that examiner is engaging in conjecture by making an assumption that the Rodriguez-Ely patent must have some means for coupling a source of gas to the bore a. From the examiner's viewpoint it is not mere conjecture. The examiner is unaware of any manner to supply gas to passage a other than directly coupling the bore a to the gas supply source. How else would the supply of gas be connected to the bore if not by a hose or container that is coupled to the bore by a coupling member? Some apparatus must supply and

seal the supply of fuel gas to the bore α for its described use. Any such apparatus could be considered a coupling member. It is essential and intrinsic to the cutting torches operation that is be supplied with fuel.

In response to applicant's argument that his invention recites the body member in combination with an engine/cylinder, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

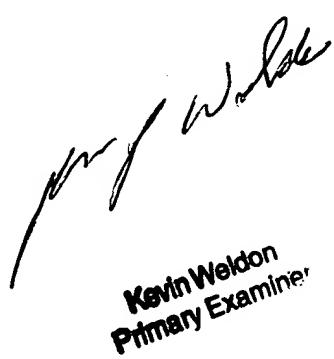
11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Weldon whose telephone number is (703) 308-1117. The examiner can normally be reached on Tues-Fridays from 7 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andres Kashnikow, can be reached on (703) 308-1137. The fax phone number for this Group is (703) 305-3588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3588.



A handwritten signature in black ink, appearing to read "kevin weldon".

Kevin Weldon
Primary Examiner